

McGrath Law Offices

Harry P. McGrath, Esquire

Suite 532, Scranton Life Building
538 Spruce Street
Scranton, Pennsylvania 18503
Telephone (570) 343-3389
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September 13, 2000

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

RE: MUR 5075

Dear Mr. Noble:

Enclosed please find the answer to the complaint as filed by the National Republican Congressional Committee against Pat Casey, Casey for Congress and the Pennsylvania State Party. Also, enclosed please find my fully executed statement of designation of counsel.

Should you need any further information regarding this matter, please do not hesitate to contact this office.

Very truly yours,


Harry P. McGrath

HPM/dm

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FEC MAIL ROOM

2000 SEP 14 A 8:00

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

SEP 14 10 27 AM '00

2000 SEP 14 10 27 AM '00

STATEMENT OF DESIGNATION OF COUNSEL

MUR 5075

NAME OF COUNSEL: Harry P. McGrath, Esq.

FIRM: McGrath Law Office

ADDRESS: Scranton Life Building - Suite 532

538 Spruce Street

Scranton, PA 18503

TELEPHONE: (570) 343-3389

FAX: (570) 343-4921

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

8/11/00
Date

[Signature]
Signature

RESPONDENT'S NAME: Richard Eckersley, Treasurer

Casey for Congress 2000

ADDRESS: 434 Lackawanna Avenue

Scranton, PA 18503

TELEPHONE: HOME (570) 563-2371

BUSINESS (570) 346-8425

21.04.405.2968

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Lawrence M. Noble, Esq.
General Counsel
C/O Jeff S. Jordan
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: MUR 5075

Dear Mr. Noble:

The Casey for Congress Committee, Richard Eckersley, Treasurer and Patrick Casey individually, by and through undersigned counsel, hereby respond to the above-referenced complaint filed by the National Republican Congressional Committee (hereinafter "NRCC").

I. FACTUAL BACKGROUND

A. Introduction

Pat Casey and Don Sherwood are locked in perhaps the closest Congressional race in America, in Pennsylvania's 10th District. Sherwood, who appears on almost every list of "America's Most Vulnerable Incumbents", seeks by virtue of this complaint merely to generate negative publicity about Pat Casey and about the Democratic Party. The facts, set forth and verified in affidavits authored by the individuals alleged to have committed the violations, support this conclusion. Further, the spurious nature of this complaint is self-evident. Donald F. McGahn II, the complainant, failed to swear to its content as is required by title 2 U.S.C. §437g, which reads in pertinent part, "Such complaint shall be in writing, signed and sworn to by the person filing such complaint, shall be notarized, and *shall be made under penalty of perjury and subject to the provisions of section 1001 of title 18.*" (See complaint at p. 4, emphasis added.)

The gravamen of the complaint's "factual background" is a gentleman named Doug McLinko, a *Republican Township Supervisor who organizes grassroots campaign activity for Sherwood in Bradford County*. (See, Towanda Daily Review article of August 6, 2000 attached hereto and incorporated by reference and marked as Exhibit "A") It is McLinko, a Sherwood stalwart, who sponsored the meeting at issue here and also advertised the meeting in advance in a local newspaper. (See classified ad attached hereto and incorporated by reference as Exhibit "B".)

It is axiomatic that *public* meetings are *open to the public*. McLinko took the affirmative step to advertise the meeting and to open it to the public. *Id.* In the aftermath of his poorly organized, and *totally public*, grassroots meeting, McLinko rushed headlong to make-up for his political ineptitude by shopping a negative story to the Towanda Daily Review about an "infiltration" of a *public* event. Unfortunately, the local paper in McLinko's area was deceived and used in his game of political pass-the-buck, printing his version of events, verbatim, as if McLinko's version was unbiased.

Now, with this complaint, the only basis for which is McLinko's story, the Republicans attempt to exploit the Federal Election Commission in the same way as they used the Towanda Daily Review.

B. Claimant's "factual background" is contrary to fact.

The Casey for Congress Committee, Richard Eckersley, Treasurer and Pat Casey individually, upon investigation of the complaint have learned that two volunteers who support the Democratic party did in fact attend McLinko's public meeting. Importantly, none of the respondents, Casey for Congress, Richard Eckersley, Treasurer Pat Casey, or the Pennsylvania Democratic party, had any involvement whatsoever in the two volunteers' ill-considered decision to attend a public meeting at which they were not welcome. However, in the interest of full-disclosure and to assist the Commission in resolving this issue, the Casey for Congress Committee, Richard Eckersley, Treasurer, Pat Casey individually, and the Pennsylvania Democratic party, after determining the identification of the two individuals, requested that the volunteers respond personally to McLinko's false, partisan allegations about this public meeting. (See affidavit of Jason Young attached hereto and incorporated by reference and marked as Exhibit "C").

As the letter attests, at no time did the men misrepresent themselves; at no time did they distribute the material in question. The entirety of the story is utterly simple: First, the two young men decided, naively, to take the Sherwood campaign up on its public offer; second, Sherwood's forces realized that their public meeting was not private; and third, the two men left after being surrounded and questioned by Sherwood's people. The only misrepresentation occurred *after* the two men left: McLinko, Sherwood and the NRCC decided to prevaricate shamelessly about the details in order to drum up negative press.

162 504 40 12

Additionally, in further response to the Republicans' complaint, at no time has the Casey for Congress Committee, Richard Eckersley, Treasurer, the Pennsylvania Democratic party, or any employee or agent thereof, ever distributed materials constituting express advocacy without the appropriate disclaimer notices. The literature appended to the Republicans' complaint was designed, printed, paid for and circulated by a private citizen totally unaffiliated with the Casey for Congress campaign, Richard Eckersley, Treasurer with Pat Casey individually, with the Pennsylvania Democratic party, or with any employees or agents thereof. (See affidavit of John Glenning attached hereto and incorporated by reference and marked as Exhibit "D"). Once again, however, in order to assist the Commission in resolving this matter, the respondents requested that Mr. Glenning, who is an outspoken community activist who has no role, officially or unofficially, in the Casey campaign or in the Democratic party, submit a notarized letter detailing the origins and related details of his "anti-Sherwood" literature. *Id.*

Although no one, but specifically Casey for Congress, Richard Eckersley, Treasurer, its agents or employees, or the Pennsylvania Democratic party can be responsible for the unilateral actions of private citizens who are frustrated with their public representation, the respondents will officially request that Mr. Glenning cease and desist from any further circulation of material bearing on election activity that does not have the appropriate disclaimer notices. (See letter from Casey for Congress attached hereto and incorporated by reference as Exhibit "E").

As Mr. Glenning's letter attests, the material at issue here is in no way, directly or indirectly, a product of, in any way affiliated with, or authorized by any of the parties named by the Republicans in their complaint.

II. REPLY TO CLAIMANT'S ALLEGED "VIOLATIONS"

- A. The prohibitions of title 2 U.S.C. § 441h are wholly inapplicable in this factual context. There was no "misrepresentation". However, assuming the absurd conclusion that there was misrepresentation, there is no related "...matter which is damaging to such other candidate or political party or employee or agent thereof..." a prerequisite to triggering the operation of §441h.**

Claimants distort section 441h almost beyond recognition in order to fit their square peg that is the factual scenario set forth in their complaint, into the round hole that is §441h.

As Exhibit "C" verifies, there was no misrepresentation of any kind at or before the public meeting. Further, as the Republicans know, this section seeks to remedy not the factual scenario here, a public meeting followed by partisan allegations; rather, 441h

was passed to prevent "push" calls, anonymous negative mail and other instances where one campaign engages in efforts to smear the other side under the cover of anonymity or a false identity.

Assuming, *arguendo*, that claimants' partisan accusations are true, (which are strictly denied), there was absolutely nothing "damaging" accruing to anyone as the result of the volunteers' attendance at the public meeting. McLinko himself admits this in the Daily Review story. McLinko said there were no important campaign secrets that were discussed at the meeting. (See Exhibit "A"). Further, lest we forget, this was a public meeting advertised as such in the local newspaper (see Exhibit "B") and information gleaned by attending the same was available to everyone in attendance.

B. The "material" referenced in the complaint was not distributed by anyone affiliated with the Casey for Congress campaign, with the Pennsylvania Democratic party, or with any employee or agents thereof.

As Mr. Glenning attests, it was he, and not any of the parties named in the complaint, who was solely and completely responsible for the production and distribution of the material describing Don Sherwood's abysmal environmental record. (See Exhibit "D") Unequivocally, there was no consultation or coordination regarding this document with any of the parties named in the complaint.

III. CONCLUSION

The Federal Election Commission should know that, tellingly, the NRCC and the Sherwood for Congress campaign fax-blasted the complaint and the attached press release throughout the district. (See *NRCC News* dated 08/18/00 attached hereto and incorporated by reference and marked as Exhibit "F".)

Indeed, the local headlines generated by the filing of the complaint are already being used in a scathing, personally negative television attack ad against Pat Casey. Not surprisingly, the NRCC sponsors the attack ad on Sherwood's behalf. More than anything else, the complaint sought these headlines for use in a television commercial.

In other words, this complaint is nothing other than an attempt by the NRCC and Sherwood to use the Commission legitimize their taking "dirty tricks" to an unprecedented low.

The complaint is utterly and completely baseless and merits no further investigation by the Federal Election Commission; to the contrary, both the National Republican Congressional Committee and the Sherwood for Congress campaign should

be duly sanctioned for exploiting the Commission, using nothing but frivolous claims spouted from the mouths of Republicans, which were unwittingly reprinted in a local paper to achieve purely partisan political ends.

WHEREFORE the Casey for Congress Committee, Richard Eckersley, Treasurer and Patrick Casey individually, respectfully request that the Federal Election Commission dismiss the complaint (MUR 5075) on the following grounds:

- (i) Substantively, it is an unfounded political maneuver as verified by the foregoing, and;
- (ii) Procedurally, due to the deficient nature of the filing. Title 2 U.S.C. §437g requires that such complaints be made "...under penalty of perjury and subject to the provisions of section 1001 of title 18." Page four (4) of the complaint reveals that it lacks the necessary affirmation the statute mandates.

ACCORDINGLY, it is requested that the Commission dismiss the complaint and thereby deny the Republicans' desperate request for further investigation of this most routine of campaign bickering.

Very truly yours



Harry P. McGrath, Esq.
Scranton Life Bldg. Ste. 532
538 Spruce Street
Scranton, PA 18503
PA ID #67025

DATE

9/13/00

• Casey's camp accused of spying on opposition

Sherwood supporters say two Dems lied to get into congressman's campaign meeting; Casey spokesman says those responsible could be Democrats, but they don't work for candidate

BY BOB IGOE

(570) 265-1629

The Daily/Sunday Review

As the race for the 10th Congressional District heats up, supporters of incumbent Republican Congressman Don Sherwood say that his opponent's camp is resorting to dirty tricks.

According to Republican Wysox Township Supervisor Doug McLinko, a supporter of Sherwood, two young men who support Democrat Pat Casey, a Scranton attorney, lied to get into a meeting of Sherwood supporters in Wysox recently, and he is upset with what he calls this unethical tactic.

"They lied to get into the meeting," said McLinko. "They told us that they were supporters of Republican Sen. John McCain and asked to sit in on our meeting. After the meeting, though, they were really evasive with us when we asked them some questions. They just took off in their cars as fast as they could."

The meeting of Sherwood supporters was held at McLinko's eatery, Stewart's Family Restaurant on U.S. Route 6. Casey lost to Sherwood, of Tunkhannock, for the 10th District seat by 515 votes in 1998, and political forecasters say this year's rematch is shaping up to be one of the most hotly contested races in the nation.

See SHERWOOD, Page 16A



Pat
Casey

Scranton
Attorney



Rep. Don
Sherwood

R-Tunkhannock

SHERWOOD

Continued from Page 1A

Charlie Lyons, a spokesman for the Casey campaign, says that while it is possible that the two young men in question were Democratic Party volunteers, he denies that they acted under orders from the Casey camp.

"We would not condone that," he said. "I made some calls and verified that there may have been two Democratic supporters at the meeting, but they were not Casey employees."

According to McLinko, the license plates on the men's vehicles were from out-of-state. He added the plates on their cars were different than the states the men claimed to be from.

He also said he was suspicious of how the pair, who claimed to be "college students just passing through" Bradford County, learned of the meeting, since there was no sign or advertising to promote it.

After the meeting, McLinko said he saw the two at the Troy Fair dressed in shirts with Casey's logo, and they were handing out literature about Sherwood, which McLinko called "a pack of lies."

McLinko said he approached the men at the fair and told them what they did at the meeting was wrong. During the ensuing conversation, he said they admitted they were working for Casey.

"We weren't discussing anything top-secret at that meeting," McLinko said. "They liked to get into this meeting. They lied about their purpose for being there. It was just blatant dishonesty on their

part and for what? Is this the kind of tactics that Pat Casey feels he needs to use to get elected?"

As for McLinko's statement that the two men were later at the Troy Fair in Casey regalia, Lyons again said this is possible.

But he pointed out the employees at the Democratic Party booth at the fair were working for all candidates of the party.

Lyons added the two men could have easily gotten their hands on the Casey shirts, which are often passed out at campaign events.

Although The Review could not locate the two men described by McLinko at the fair, the newspaper did acquire a copy of a flyer that the Democratic Committee distributed from its booth there.

The one-page, black-and-white document, which lists no funding source and does not credit any sources for its information, is titled, "An important message from your union."

It encourages residents to call a toll-free number, which has been disconnected, to criticize Sherwood for voting "to squander America's budget surplus on a \$792 billion tax cut for the rich and Big Business." The letter also claims "more than 80 percent of this bonus will go to the richest 20 percent of Americans; two-fifths will go to the wealthiest 1 percent."

Sherwood finds the charges to be completely

inaccurate.

"This flyer is one left over from last year," said Sherwood. "Even so, these charges are still wrong, just as they were then. This tax cut bill, which President Bill Clinton vetoed, contained such things as marriage penalty tax relief, which would have given a tax break to one out of every 1.5 persons in this district alone, not just the rich."

Sherwood continued that the tax cut bill "also contained a measure to eliminate the 3 percent tax on telephones. And I know a lot of people who own phones that aren't wealthy. Their (the Democrats) assertions are false and full of half-truths."

Sherwood says he feels his record of service will overcome the negative campaigning and tricks of his opponent.

"We are committed to a positive campaign dedicated to the issues," said Sherwood. "We want to get out the message about all of the positives we have accomplished, such as lowering taxes, working to preserve Social Security and supporting education and national defense."

He continued, "This race is about the people of the 10th District and what is best for them. Unfortunately, we have outside influences coming in and trying to influence the outcome. I would be interested in knowing who is funding these efforts."

Sherwood added, "We have done a lot of good for the people of the 10th District."

N

's list named

oir

citizens meet

Births

TOWANDA BEAGLE CLUB:
Will meet on Tuesday at 8 p.m. at the clubhouse in Liberty Corners.

Grange Notice

Will meet on Wednesday, July 19, at 8 p.m. West Burlington Community Building.

Memorial Hospital News

Angeline Wilcox, New Albany;
Michael Thiem, Towanda; Lisa
Kalacinski, Towanda; Vicky
Newbury, Towanda.

Anniversaries

Cheryl and Merl Blair of Powell
are celebrating their 36th wedding
anniversary today.

Jason A Young
PO Box 413
Van Dyne Road
Beach Lake, PA 18405

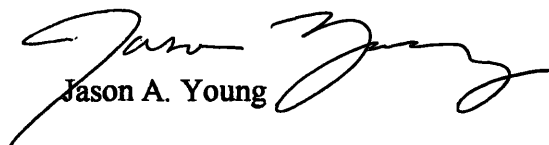
To Whom It May Concern:

I, Jason Young, wish to make it clear that Joshua Bushey and myself do volunteer for and support the Democratic Party. We did attend what was advertised as a public meeting. Notwithstanding the fact that we do not want to see Don Sherwood re-elected, it was our belief, albeit in retrospect a foolish one (for political reasons) that Mr. McGlinko would not have advertised the meeting had it not been open to the public.

I wish to make it clear that at no time were we under orders or cleared by Casey for Congress or the Pennsylvania Democratic Party to attend this meeting. Equally, we at no time misrepresented our political affiliations in any way at the meeting.

At no time have we distributed any election material apparently referenced in the Republican complaint about our activity. It is our understanding that the Republicans are blaming us for documents printed by someone totally unaffiliated with the Democratic Party. We only distribute those materials duly authorized and paid for by the respective candidates in Northeastern Pennsylvania.

Sincerely,


Jason A. Young

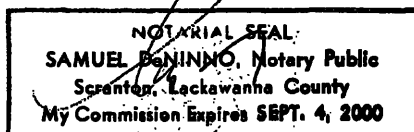


Exhibit C

September 5, 2000

To Whom It May Concern:

This letter is to inform interested parties that I created the attached document. The Casey Campaign and the Democratic Party had nothing to do with this document. They were completely unaware of this document, provided no funds and did not distribute this document.

This is a factually correct document based on all the facts as I currently understand them. There is nothing in this document that I know to be false.

Under no circumstance do I want my name released to any party in regards to this. I wish to remain completely anonymous as is my right under the First Amendment to the United States Constitution and reaffirmed by Supreme Court rulings concerning anonymous political speech.

On a personnel level, I live in an area that is heavily Republican and I am concerned about threats and possible retaliation if my name becomes public concerning this document.

I would greatly appreciate if my request would be honored.

Sincerely,



John Glenning

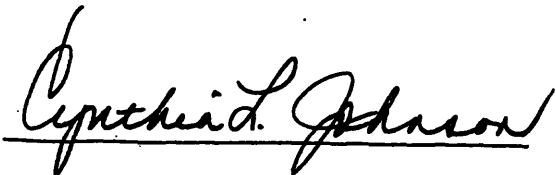


State of New York)

)ss.:

County of Broome)

On the 5th day of September in the year 2000 before me, the undersigned, a Notary Public in and for said state, personally appeared John Glenning, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that, by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.



CYNTHIA L. JOHNSON
Notary Public, State of New York
Broome County # 01JO4988486
Commission expires Nov. 12, 21

This certificate attached to the following one page document: Personal letter to Whom It May Concern dated 9/5/00 signed "John Glenning"

Exhibit D

2000 09 05 10 49 23

Casey

Congress 2000

P.O. Box 1494 / Scranton, PA 18501
(570) 344-2060 • (570) 344-2056 Fax
email: votecasey@aol.com • www.caseyforcongress.com

September 11, 2000

Mr. John Glenning
RD 5, Box 173
Montrose, PA 18801

Dear Mr. Glenning:

I am writing this letter to you in my capacity as Treasurer for Pat Casey's campaign committee.

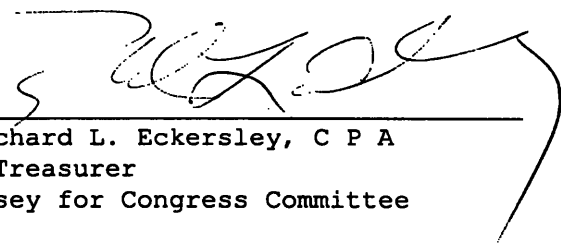
We received notice from the Federal Election Commission that a complaint has been filed by the National Republican Congressional Committee concerning a piece of literature of which we understand you were the author (copy enclosed herewith). The complaint alleges that the literature in question did not reflect appropriate disclaimers identifying it as either authorized by the Casey for Congress Committee or authorized by some other party.

The Committee, of course, had no participation in the creation of the handbill in question.

We have no authority or desire to infringe upon your right of expression. However, given the complexity of the Federal Election laws, and our intention to comply strictly with its mandate, we request that, in the future, you identify yourself as the author or creator of any literature which you may distribute expressing your personal opinion.

We appreciate your cooperation.

Very truly yours,



Richard L. Eckersley, C P A
Treasurer
Casey for Congress Committee

RLE/jg
enc.

TR TB



Tom Davis, M.C.
Chairman

Jim Wilkinson
Director of Marketing and Communications

Dan Mallooney
Deputy Chairman

provide a better copy for you

NRCC NEWS

National Republican Congressional Committee

320 First Street, S.E., Washington, D.C. 20003 <http://www.nrcc.org>

FOR IMMEDIATE RELEASE
Friday, August 18, 2000

Contact: Marit Babin
202.479.7070

Pat Casey Campaign Caught Engaging in Dirty Tricks Against Rep. Don Sherwood

NRCC asks Federal Election Commission to investigate Pennsylvania Democrats' unlawful and unethical tactics

(Washington, DC) - Today, the National Republican Congressional Committee (NRCC) filed a formal complaint with the Federal Election Commission (FEC) asking an investigation into "dirty tricks" by Democrat Pat Casey and his operatives.

According to an eye-witness account cited in the complaint, two operatives of the Casey campaign "went on an outing" of the Sherwood campaign, claiming to be supporters of Senator John McCain. Although the Casey campaign initially denied any link to the two, the operatives later admitted that they were working for Casey. They were caught wearing Casey T-shirts and distributing false, anti-Sherwood literature.

Federal law prohibits such activity, specifically fraudulently misrepresenting oneself as acting on behalf of another campaign. Said NRCC General Counsel Don McGahn: "Such tactics are unethical and illegal - this is a very serious matter. Pat Casey ought to know better, but I guess this shows how desperate he is. First his cronies twist the truth about Sherwood's record on prescription drug coverage for seniors. Now he uses dirty tricks to make the ludicrous claim that Sherwood wants to open dumps in the district. Casey should dump the dirty tricks, and tell the truth."

(please see attached evidence and complaint).

-end-

Exhibit F

2000-08-18 15:19:00